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January 25, 2023

VIA ECF

Honorable David T. Schultz
United States District Court
300 South Fourth Street
Minneapolis, MN 55415

**Re: *Fair Isaac Corporation v. Federal Insurance Co. and ACE American Insurance*
Court File No. 16-cv-1054 (DTS)
*M&G No. 15081.0008USZA***

Dear Judge Schultz:

Approximately two weeks after the Court's deadline for identification of exhibits, Defendants Federal Insurance Company and ACE American Insurance Company (collectively "Defendants") identified several new trial exhibits that they intend to rely upon at trial. Plaintiff Fair Isaac Corporation ("FICO") writes to request permission to file an additional motion in limine directed to three of these new trial exhibits. Good cause exists to allow this motion in limine because FICO only learned of Defendants' intention to rely upon and introduce such exhibits after the initial deadline for motions in limine set by this Court.

The Court's Trial Notice and Final Pretrial Order required the parties exchange lists and copies of all exhibits on their respective lists by January 9, 2023. (Dkt. No. 923 ¶ 3.) That same Order set the deadline to file affirmative motions in limine as January 13, 2023. (*Id.* at ¶ 6.) Both parties exchanged exhibit lists and filed their respective motions in limine, but, on Monday January 23, 2023—approximately two weeks after the deadline to identify

and exchange exhibits—Defendants identified a “supplemental exhibit list.” (Ex. 1 attached hereto.) That supplemental exhibit list identified as new exhibits, among others, the Complaint, Amended Complaint, and the Second Amended Complaint for these proceedings. (*Id.*)

These pleadings are not proper exhibits; they are not evidence nor is there a witness to lay proper foundation to introduce them.¹ And, they were never previously disclosed as potential exhibits for use at trial. Because Defendants did not identify these documents as trial exhibits by the required deadline of January 9, 2023, the deadline for FICO to file a motion in limine to exclude these documents has passed. Accordingly, FICO respectfully requests the Court either exclude introduction of, or reference to, these three late-disclosed documents by Defendants at trial or allow FICO to file a motion in limine seeking to exclude introduction of, or reference to, these pleadings.

FICO respectfully suggests that it could file its motion in limine seeking to exclude introduction of, or reference to, the Complaint, Amended Complaint, and the Second Amended Complaint by Monday January 30, 2023; Defendants could file their opposition regarding the same by February 6, 2023; and the parties could present their respective arguments to the Court at a time and date convenient for the Court.

Sincerely,



Allen Hinderaker

cc: All Counsel of Record (via ECF)

¹ FICO has already filed a motion in limine to exclude introduction of, or reference to, the Court’s summary judgment Order because, *inter alia*, it is not evidence and would confuse the jury. (Dkt. No. 944.) Many of the same reasons that warrant excluding the Court’s summary judgment Order also warrant excluding introduction of, or reference to, the Complaint, Amended Complaint, and Second Amended Complaint.

EXHIBIT 1

From: [Guidero, Roxana](#)
To: [FICO-MGTeam](#)
Cc: [Godesky, Leah](#); [Rush, Daryn E.](#); tfleming@fredlaw.com; ljanus@fredlaw.com; ryoung@fredlaw.com; [Perez, Sharlean](#); dnorvold@fredlaw.com
Subject: FICO - Defendants' Supplemental Exhibit List
Date: Monday, January 23, 2023 5:15:36 PM
Attachments: [Defs. Supplemental Ex. List.XLSX](#)

CAUTION - External.

Counsel,

Attached is Defendants' supplemental exhibit list. A link to a secure website from which you can download the exhibits themselves will follow from Sharlean Perez. As before, while the parties work through their objections and before filing the final exhibit list with the Court, we've assigned each document a temporary control number in lieu of an exhibit number (identified as TC-XXXX).

Defendants' inclusion of these documents on this supplemental exhibit list shall not be construed as a waiver of Defendants' objections to FICO's use of the same documents. Defendants reserve the right to supplement or amend this exhibit list including, but not limited to, in response to the Court's rulings on motions in limine, any stipulations among the parties, other developments in the case, to replace incomplete exhibits, or to provide better copies of exhibits. Defendants reserve the right to present demonstrative exhibits at trial that are not yet developed or included on this list, as well as use exhibits for impeachment or rebuttal that are not included on this list. Furthermore, Defendants do not intend to waive any objections regarding the admissibility of any evidence, including objections set forth in any forthcoming motions in limine.

Best,

O'Melveny

Roxana Guidero

Counsel

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Def's. Control No.	Date Offered	Marked	Admitted	Date of Document	Begin Bates No.	End Bates No.	Description
TC-0353				2006.02.24	FICO0062147	FICO0062148	Email from David E. Burgess to Keith Owes and others
TC-0354				2006.02.28	FICO0062149	FICO0062151	Email from Bill Waid to Marcia M. Palmer and others
TC-0355				2006.03.01	FICO0062287	FICO0062288	Email from David E. Burgess to Dan Foy and others
TC-0356				2006.12.28	FED010117_0001	FED010119_0001	Screenshot of Blaze Advisor Software License Contract Data
TC-0357				2007.02.27	FICO0063033	FICO0063034	Email from Karen Beale to Vincent Gamba and others
TC-0358				2015.10.23	FICO0004226	FICO0004229	Email from James Chaban to Bill Waid
TC-0359				2015.11.09	FICO0004308	FICO0004311	Email from Isabel Vives to Tim Giardina and others
TC-0360				2016.04.21			Complaint
TC-0361				2017.02.01			Amended Complaint
TC-0362				2018.02.05			Declaration of William Waid ISO FICO's Opposition to Federal's Motion to Compel
TC-0363				2018.09.11			Second Amended Complaint
TC-0364				2021.00.00	FICO0070549	FICO0070779	Chubb Ltd. FY 2021 10-K Filing
TC-0365				2021.00.00	FICO0071690	FICO0071981	Chubb Ltd. 2021 Annual Report
TC-0366				2021.00.00			FICO FY 2021 10-K Filing
TC-0367				2021.00.00			FICO 2021 Annual Report
TC-0368				2021.00.00	FICO0081365	FICO0082072	Federal Insurance Company 2021 Annual Statement